

Inventor: KLINGLER  
Attorney Docket No. 41587.012502(346)  
Appl. No. 10/760,658

***REMARKS***

***Amendment of Specification to Include Additional Priority Claim Information***

Due to a clerical error, the documents from which this application claims priority were not properly cited in the U.S. parent case 09/729,538 (now U.S. Patent 6,682,144). To correct this situation, Applicant herewith submits the above amendment to the specification as well as the certified priority document, German application 19825225 filed 5 June 1998 (now abandoned). This German application became the basis for PCT application EP99/03825 filed 2 June 1999, on which the U.S. parent of the present application is based.

Applicant refers the Examiner to the 9/9/03 Notice of Allowability in the U.S. parent application 09/729,538 in which the Examiner in that case stated “Acknowledgement is made of applicant’s claim for foreign priority based on an application filed in Germany on 06 May 1998.” Given the European method of designating dates in the “day/month/year” format this priority date would have been shown as “05/06/1998”, which actually means “05 June 1998”, not “06 May 1998”. Therefore the Examiner has previously acknowledged the priority status of this German application.

It is Applicant’s understanding, based on reading of relevant sections of the MPEP and from discussions with US PTO personnel, that this issue regarding the claim of priority cannot be remedied with a Certificate of Correction or a Reissue Application. Applicant wishes to correct this issue through the enclosed amendment of this continuation application.

Inventor: KLINGLER  
Attorney Docket No. 41587.012502(346)  
Appl. No. 10/760,658

***Claim objections***

Applicant has amended claims 35 and 38 according to the Examiner's suggestions. However, Applicant respectfully disagrees with the Examiner's suggestion regarding claims 32 and 37 to amend "said connecting webs" to "each of said connecting webs". By stating "each of said connecting webs forming a substantially horizontal pivoting axis", this implies that a horizontal axis would be defined by one web alone. However, as the webs comprise relatively small amounts of material, a single web by itself may not sufficiently define a horizontal axis. On the other hand two or more webs together will define a single axis of movement, since two points define a line. This concept is embodied in the claims at issue since claims 32 and 37 claim "two" or "a plurality" of connecting webs, respectively. This latter concept is better expressed in the present language of "said connecting webs forming a substantially horizontal pivoting axis."

***Claim Rejections under 35 USC § 103(a)***

The Examiner has rejected claims 32-34 and 37-47 under 35 USC § 103(a) as being unpatentable over U.S. Patent No. 5,954,399 to Hong in view of U.S. Patent No. 6,619,739 to McMillen. The Examiner has also rejected claims 35, 36, and 48-52 under 35 USC § 103(a) as being unpatentable over Hong in view of McMillen as applied to claims 32-34 and 37-47 above, and further in view of U.S. Patent No. 5,651,583 to Klingler et al. However, since the Examiner has failed to make a *prima facie* case for rejection under section 103(a) for these claims, Applicant respectfully requests that this rejection be withdrawn.

A *prima facie* case for rejection under section 103(a) has not been made because none of  
2241612.02

Inventor: KLINGLER  
Attorney Docket No. 41587.012502(346)  
Appl. No. 10/760,658

the cited references, when taken as a whole, teaches, suggests, or motivates all of the elements of the cited claims. In particular the Examiner states on page 3 of the Office action mailed January 12, 2006, that "Hong discloses a lumbar support mechanism that is basically the same as that recited in claims 32-34 and 37-47 except that the lumbar support element is not vertically oriented and, as a result, the connecting webs do not form horizontal pivoting axes, as recited in the claims." However, despite what might be some superficial resemblance to the device claimed in claims 32-34 and 37-47, the device disclosed by Hong fails to teach, suggest, or motivate a number of key elements of the above-listed claims. Given that the Examiner has cited to Hong for all of the basic elements of the claimed lumbar support, it is evident that since Hong does not teach, suggest, or motivate all of the elements of the claims, the cited references taken together as a whole also fail to teach, suggest, or motivate all of the elements.

Hong does not teach two (or a plurality) of oppositely-oriented flap portions attached to a lumbar support element by two connecting webs which together form a substantially horizontal pivoting axis. The support wings 230 of Hong are not equivalent to the flaps of the present invention and, due to the size of the connecting web material between them, definitely do not form a pivoting axis of any kind. Instead, given the large amount of material between the wings 230 and the relatively wide lateral spacing of the wings, one skilled in the art would expect that the wings would move with the support plate 200 as the plate arches and that the wings 230 would not pivot relative to the support plate 200.

Indeed, Hong makes it clear that the whole point of the wings 230 is that they not pivot.

Instead, the wings are meant to support the seat occupant during various driving maneuvers:

The support wings 230 support the occupant's waist when the occupant's body is leaned in an opposite direction of a turning direction of the car due to the centrifugal force during cornering, so that they can reduce the rock of the occupant's body. Even in case of a severe collision, the support wings 230 can more safely support the occupant's waist because the projected middle part of the support plate 200 is retreated toward a middle part of the wire frame 100 to relieve the impact.

Hong '399 patent, column 4, lines 58-66.

Indeed, if the wings 230 of Hong were modified to make them “pivoting”, as would be required to render the claimed invention obvious, the wings would be inoperative for Hong’s stated purpose of supporting the seat occupant. “If proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification.” MPEP § 2143.01(V) (citation omitted) (emphasis added). Thus, given that modifying the invention of Hong to make the wings 230 “pivoting” would render the invention unsatisfactory for its intended purpose, it is clear that there is no suggestion or motivation in Hong to make this proposed modification. It is therefore also clear that no *prima facie* case for rejection under section 103(a) has been made for the above-listed claims.

In contrast to the horizontally-oriented wings of Hong, which are meant to provide lateral support to hold a seat occupant in place, the vertically-oriented flaps claimed in the present application are intended to provide added comfort by flattening the apex of arch as felt by a seat occupant from the lumbar support mechanism: “By this solution an arching element is attained

Inventor: KLINGLER  
Attorney Docket No. 41587.012502(346)  
Appl. No. 10/760,658

from an archable element member and a panel, in which case the panel connected thereto, due to its low surface area connection, is subjected to little or no arching and, regardless of the degree of arching, always acts in a resilient and thereby large area manner." Paragraph [0008] of the published application, Pub. No. 2004/0178670, published September 16, 2004. Furthermore, paragraph [0031] notes:

From FIG. 7a the large surface area contact of the cover 40 against the entire support is apparent in the starting position. However, even at maximum arching a large surface area and elastically yielding support is supplied by the panel(s) to the cover 40, resulting in a clearly improved seating comfort being attained as compared with the aforescribed state of the art, where merely the rigid unyielding arch would be effective and that, moreover, only in a linear fashion.

Pub. No. 2004/0178670, ¶ [0031]. The effect that the pivoting panels has on the way the lumbar support would impact a seat occupant's back can be seen in Figures 2, 6, and 7 of the present application.

On the other hand it is clear that the wings 230 of Hong do not serve to lessen the impact of the arching support on the seat occupant's back. As can be seen in Figure 5 of Hong, as the support plate 200 arches the apex of the arch moves further and further forward into the seat occupant's back, and the wings 230 do nothing to lessen this impact or to increase the comfort of the occupant.

Thus given the vast inherent differences between the subject matter of the Hong reference compared to the claimed subject matter in the present application, it is clear that there is no teaching, suggestion, or motivation in the cited references when taken as a whole to produce the claimed invention.

Inventor: KLINGLER  
Attorney Docket No. 41587.012502(346)  
Appl. No. 10/760,658

***Conclusion***

Applicants respectfully submit that all of the independent and dependent claims are allowable over the prior art of record. It is believed that a full and complete response has been made to the outstanding Office Action, and as such, the present application is in condition for allowance.

If the Examiner finds that the application is unpatentable for any reason, Applicant hereby formally requests that the Examiner contact the undersigned by telephone at the number provided so that an interview may be scheduled.

Prompt and favorable consideration of this Amendment is respectfully requested.

Respectfully submitted,

Grant Kang 3/28/06  
By: Grant D. Kang, Reg. No. 37,651  
Husch & Eppenberger, LLC  
190 Carondelet Plaza  
St. Louis, MO 63105  
314-480-1640  
314-480-1505 FAX